

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 9483

INFO AMCONSUL RIO DE JANEIRO

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E.O. 11652: N/A

TAGS: EAIR, BR

SUBJ: AVIATION FUEL CHARGES

REF: BRASILIA 10618

1. AT MEETING WITH EMBOFFS JANUARY 4 TO DISCUSS DECREE-LAW 1490,
ANTONIO DA ROCHA OF DIVISION OF TRANSPORTATION AND COMMUNICATIONS
IN FOREIGN MINISTRY SAID FOLLOWING:

A) DECREE-LAW 1490 EXEMPTS NONSCHEDS FROM PAYMENT OF AVIATION
FUEL TAX AND THEREBY CANCELS THOSE PARTS OF PREVIOUS LEGISLATION
(SEE ARTICLE 8 OF LAW 1815 OF 1953 WHICH CITED PARA 4B REFTTEL)
THAT, IN THE GOB INTERPRETATION, GRANT RECIPROCAL EXEMPTION
FROM AVIATION FUEL TAX ONLY TO SCHEDULED AIRLINES UNLESS
THERE IS A SPECIFIC AGREEMENT GRANTING EXEMPTION TO NONSCHEDS.
HE SAID U.S. NONSCHEDS "SHOULD NOW BE HAPPY THAT WHAT THEY
CONSIDERED AN IRRITANT HAS BEEN REMOVED".

B) THE "ALINEA M" AMOUNT IMPOSED BY DECREE-LAW 1490 IS NOT
A TAX BUT RATHER A FEE DESIGNED TO IMPROVE SERVICES AT BRAZILIAN
AIRPORTS. HE CONCEDED, HOWEVER, THAT THIS AMOUNT WOULD
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GO TO MANY AIRPORTS AND NOT ONLY OR MAINLY TO THOSE USED BY
INTERNATIONAL AIRLINES.

C) THE "ALINEA M" AMOUNT FALLS EQUALLY UPON BRAZILIAN
AND NON-BRAZILIAN AIRCRAFT AND THEREFORE COMPLIES WITH SUB-
PARAGRAPHS 1 AND 2 OF ARTICLE III OF THE AIR TRANSPORT
SERVICES AGREEMENT BETWEEN THE USA AND BRAZIL, SIGNED 1946.

THESE SUBPARAGRAPHS READ RESPECTIVELY:

ARTICLE III

1 - THE CHARGES WHICH EITHER OF THE CONTRACTING PARTIES IMPOSE OR PERMITS TO BE IMPOSED ON THE AIRLINE OR AIRLINES DESIGNATED BY THE OTHER CONTRACTING PARTY FOR THE USE OF AIRPORTS AND OTHER FACILITIES SHALL NOT BE HIGHER THAN WOULD BE PAID FOR THE USE OF SUCH AIRPORTS AND FACILITIES BY ITS NATIONAL AIRCRAFT ENGAGED IN SIMILAR INTERNATIONAL SERVICES.

2 - FUEL, LUBRICATING OILS, AND SPARE PARTS INTRODUCED INTO THE TERRITORY OF ONE CONTRACTING PARTY OR PLACED ON BOARD AIRPLANES IN ITS TERRITORY BY THE OTHER CONTRACTING PARTY, EITHER FOR ITS OWN ACCOUNT OR FOR THE AIRLINES DESIGNATED BY IT, SOLELY FOR USE BY THE AIRCRAFT OF THE OTHER CONTRACTING PARTY, SHALL ENJOY, WITH RESPECT TO CUSTOMS DUTIES, INSPECTION FEES AND OTHER CHARGES IMPOSED BY THE FIRST CONTRACTING PARTY, TREATMENT NOT LESS FAVORABLE THAN THAT GRANTED TO THE NATIONAL AIRLINES ENGAGED IN INTERNATIONAL AIR TRANSPORT SERVICES OR TO THE AIRLINES OF THE MOST FAVORED NATION.

D) HE RECOGNIZED SERIOUSNESS AND CONCERN WITH WHICH USG AND US FLAG CARRIERS VIEWED DECREE-LAW 1490 AND ACCORDINGLY WOULD USE VISIT OF EMBOFFS AS REASON FOR REQUESTING WRITTEN EXPLANATIONS OF IT FROM MINISTRIES OF AIR, OF FINANCE AND OF MINES AND ENERGY. HE ADDED LIMITED OFFICIAL USE

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THESE EXPLANATIONS WOULD INCLUDE JUSTIFICATION FOR HIS STATEMENT THAT THE "ALINEA M" AMOUNT IMPOSED BY THAT DECREE-LAW COULD IN NOW WAY BE CONSTRUED AS A TAX. HE CONCLUDED POLITELY BUT FIRMLY THAT THE GOB HAD ACTED FULLY IN ACCORDANCE WITH BRAZILIAN AND INTERNATIONAL LAW IN PROMULGATING DECREE-LAW 1490. (COMMENT: EMBOFFS DELIBERATELY AVOIDED REFERENCE TO POSSIBLE LEGAL PROCEEDINGS BY THE RIO INTERNATIONAL CARRIERS GROUP -- SEE SUBPARA 4B REFTTEL)-AND ROCHA GAVE NO INDICATION HE WAS AWARE OF THIS POSSIBLE CHALLENGE TO THE DECREE-LAW. END COMMENT.)

2. EMPHASIZING THAT HE WAS SPEAKING PERSONALLY, ROCHA OFFERED FOLLOWING SPECULATION: IF GOB HAD "TO REVERT" FROM DECREE-LAW 1490, NONSCHEDS PROBABLY WOULD BE SUBJECT TO THE FUEL TAX WHICH HAD BEEN CANCELLED FOR THEM BY THIS DECREE-LAW. IF THEY WERE ONCE AGAIN SUBJECT TO FUEL TAX, THEY COULD ONLY BE EXEMPTED FROM IT THROUGH OUR NEGOTIATING AND SIGNING A BILATERAL CHARTER AGREEMENT WHICH, INTER

ALIA, WOULD SPECIFICALLY GRANT SUCH AN EXEMPTION. HE NOTED THAT THE GOB PROTECTED ITS INTERNATIONAL CARRIER VARIG AND HAD NO NONSCHEDS OF ITS OWN TO PROTECT; THEREFORE, THE GOB HAD LITTLE INTEREST IN NEGOTIATING GENEROUS CONDITIONS FOR NONSCHEDS AT THE POSSIBLE EXPENSE OF VARIG. EMBOFF REMINDED ROCHA THAT USG CONSIDERED THE FUEL TAX EXEMPTION AS A QUID PRO QUO (ALLUDING, OF COURSE, TO THE SIGNING OF THE AIRWORTHINESS AGREEMENT) WHICH HAD BEEN PROMISED AT A HIGH LEVEL. ROCHA ALSO SAID THAT IF THE GOB WAS PRESSURED TOO MUCH ON DECREE-LAW 1490, IT MIGHT REACT BY TAKING A HARDER LOOK AT THE QUESTION OF CAPACITY FOR FOREIGN SCHEDULED CARRIERS.
CRIMMINS

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